

### **REMARKS**

Applicant wishes to thank the Examiner for the telephone interview with Applicant's representative, Laura Kelley, on March 14, 2008. Although agreement was not reached, the above amendments generally reflect the amendments discussed in the interview, which the Examiner agreed to consider.

#### **I. Status of the Claims**

Claims 2-10 and 11-19 are pending in the application.

Claim 5 stands rejected under 35 U.S.C. 112, first paragraph.

Claims 2, 4, 8 and 12-16 stand rejected under 35 USC 102(b) as being anticipated by UK Publication Number 2298073 to O'Neill (the '073 publication). Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the '073 publication in view of UK Publication Number 2276444 to McDonald ("McDonald"). Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the '073 publication in view of U.S. Patent No. 3,742,189 to Conroy et al. ("Conroy"). Claims 3, 6 and 7 stand rejected under 35 USC 103(a) as being unpatentable over the '073 publication in view of UK Publication Number 2372807 to O'Neill (the '807 publication) and in view of Japanese Patent Number 06290762 to Fukue ("Fukue"). Claims 9-11 stand rejected under 35 USC 103(a) as being unpatentable over the '073 publication in view of U.S. Patent No. 2,984,032 to Cornell ("Cornell"). Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the '073 publication in view of Cornell and in further view of Conroy.

Reconsideration is respectfully requested in view of the amendments above and the remarks that follow.

#### **II. The Drawings**

Formal drawings are being submitted herewith. The formal drawings include reference number "16a" to identify the baffle, which was shown in the original drawings and described in the specification. Accordingly, the addition of reference number "16a" does not

add new matter to the application, and Applicant requests that the objections to the drawings be withdrawn.

**III. The Section 112 Rejections**

Claim 5 has been amended to clarify that the additional reflector is behind the light source. The Action appears to indicate that this recitation is disclosed in paragraphs 16, 17 and 48 and in the original recitations of Claim 5. Accordingly, Applicant submits that Claim 5 satisfies the written description requirement and requests that the rejection of Claim 5 under §112 be withdrawn.

**IV. The Section 102/103 Rejections**

**A. Independent Claim 2**

Claim 2 recites a flame effect electric fire including:

i) a housing having at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel, wherein the first side panel of the housing is adapted to be mounted on a substantially plane wall;

ii) heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air; and

iii) a flame simulating assembly mounted in the housing and comprising:

(a) a light source;

(b) a viewing screen on the second side panel capable of diffusing and transmitting light;

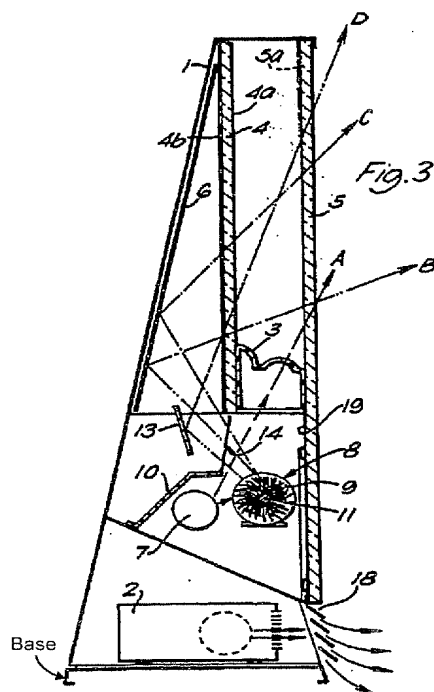
(c) a rear reflecting means disposed behind the viewing screen;

and

(d) means for producing moving beams of light, wherein the light source is disposed below the reflecting means and behind the viewing screen, the means for producing moving beams of light is disposed in front of the light source and below the screen and light from the light source is reflected by the means for producing moving beams of light onto the reflecting means and is reflected by the reflecting means onto the screen to produce a perceptible image viewable on the screen, and wherein the heating means expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing.

Claim 2 has been amended to further clarify that the housing has at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel. The first side panel is adapted to be mounted on a substantially planar wall. The device includes a heating means that expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing in the underside external panel of the housing.

Claim 2 stands rejected under § 102(b) based on the '073 publication. However, the '073 publication proposes an apparatus for simulating flame in which a fan heater 2 is configured to expel heated air in a generally horizontal direction through a grill 18 on a side of the apparatus (see Conroy (below)). Therefore, the '073 publication does not disclose an air expulsion aperture in an underside external panel of the housing as recited in Claim 2.



Accordingly, the '073 publication does not disclose all of the limitations of Claim 2 as required by §102.

In addition, there are no apparent reasons to modify the '073 publication to provide an air expulsion aperture in an underside external panel of the housing as recited in Claim 2. As

shown in Figure 3, the apparatus in the '073 publication rests on a base (labeled "Base" by Applicant). The clearance between the apparatus and the underlying supporting floor appears to be insufficient for the downward expulsion of the heated air. Modifying the apparatus of the '073 publication so that the fan would expel air through an air expulsion aperture in an underside external panel of the housing would appear to be unsafe because the apparatus rests on the ground. Therefore, Applicants submit that the '073 teaches away from an air expulsion aperture in the underside external panel of the housing.

The features of Claim 2 discussed above are also not taught or suggested by McDonald, the '807 publication, Fukue and/ or Cornell.

For at least these reasons, the recitations of Claim 2 are not taught or suggested by the art cited in the Action. Claims 3-9, 12, 14, 15 and 17 depend indirectly or directly from Claim 2 and are patentable over the cited art for at least the reasons discussed above. Accordingly, Applicant requests that the rejections under Sections 102/103 be withdrawn.

In addition, various claims depending from Claim 2 are separately patentable for at least the reasons discussed below.

**B. Dependent Claim 9**

Claim 9 depends indirectly from Claim 2, and is therefore patentable for at least the reasons discussed with respect to Claim 2. In addition, Claim 9 is separately patentable for at least the reasons discussed below.

Claim 9 stands rejected under § 103 as being unpatentable over the '073 publication in view of Cornell. In particular, Claim 9 recites a shaft that

is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the supporting bracket having a slot therein adjacent the second end of the shaft, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket via the slot in the supporting bracket, and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

Accordingly, Claim 9 recites that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released from the supporting bracket and has been amended to clarify that the second end is released via a slot in the supporting bracket.

The Action identifies element 40 of Cornell as equivalent to the flexible bushing recited in Claim 10. The opposite end of the shaft 32 clearly is not released via a slot in the supporting bracket. In fact, as discussed in Applicant's paper of October 16, 2007, Cornell states that "the motor shaft 38 is coupled to the driven shaft 32 by a resilient sleeve 40 of rubber or the like, making it an easy matter to disconnect the shaft when desired without the use of any tools." *See* Cornell col. 2, lines 40-44. Thus, Cornell does not disclose that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released, *e.g.*, from a slot in the supporting bracket as recited in Claim 9.

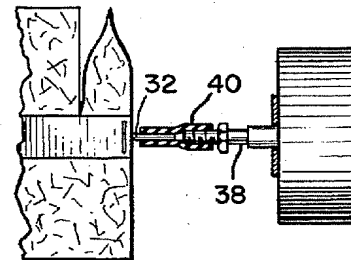
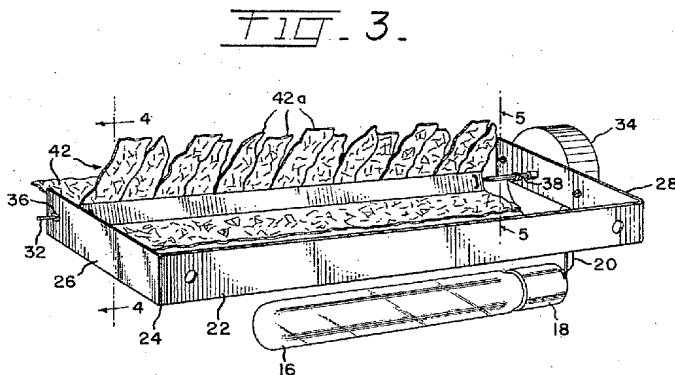


FIG. 5.

The recitations of Claim 9 are also not taught or suggested by McDonald, Conroy, the '807 publication, and/or Fukue.

Accordingly, Applicant submits that Claim 9 is separately patentable for at least the reasons discussed above, and respectfully requests an indication of same.

**C. Independent Claim 10**

Claim 10 recited an apparatus for producing a visual effect for simulating flames including:

- i) a light source;
- ii) a simulated fuel bed;

- iii) a viewing screen mounted about the fuel bed capable of diffusing and transmitting light and comprising a partially reflective front surface whereby an image of the fuel bed may be seen in the viewing screen;
- iv) means for producing moving beams of light, wherein:
  - a) light from the light source is reflected by the means for producing moving beams of light directly and/or indirectly onto the viewing screen to produce a perceptible image viewable on the screen; and
  - b) the means for producing moving beams of light comprises a shaft mounted for rotation about its axis and having a reflective material mounted thereon for reflecting light from the light source, the shaft is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

As noted above, Claim 10 was rejected in the Action under § 103 as being obvious over the '073 publication in view of Cornell.

Cornell discusses that one end of the shaft 32 is journaled in a bearing 36, and the other end includes a resilient sleeve 40. As discussed above with respect to Claim 9, Cornell discusses disconnecting the shaft 32 at the end having the resilient sleeve 40. See Cornell, col. 2, lines 40-44.

In contrast, Claim 10 recites that the first end of the shaft is configured to be retained by the flexible bushing. Because Cornell states that the resilient sleeve 40 (which the Action states is analogous to the claimed flexible cushioning) is designed to make it “an easy matter to disconnect the shaft” at the resilient sleeve 40, there is no apparent reason why one of ordinary skill would modify Cornell to disconnect the shaft 32 at the bearing 36.

For at least these reasons, Applicant submits that the recitations of Claim 10 are not taught or suggested by the '073 publication and/or Cornell. Accordingly, Applicant requests that the rejection of Claim 10 under § 103 be withdrawn.

**D. New Claim 20**

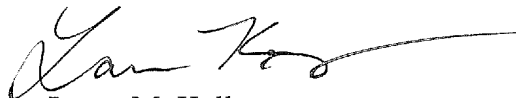
Claim 20 depends from Claim 10 and is patentable at least per the patentability of Claim 10 discussed above. In addition, Claim 20 recites that the supporting bracket has a slot therein adjacent the second end of the shaft and the second end of the shaft is released from the supporting bracket via the slot. As discussed with respect to Claim 9, Cornell does not disclose that the shaft end opposite the flexible bushing is released via a slot, and Claim 20 is patentable for substantially the same reasons as discussed with respect to Claim 9, which are not repeated here for brevity.

Accordingly, Applicant submits that Claim 20 is separately patentable and requests an indication of same.

**CONCLUSION**

Accordingly, Applicant submits that the present application is in condition for allowance and the same is earnestly solicited. The Examiner is encourage to telephone the undersigned at 919-854-1400 for resolution of any outstanding issues.

Respectfully submitted,



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Joyce Paoli